APPEAL NO. 030338
FILED MARCH 27, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on November 13, 2002. The hearing officer determined that the respondent's (claimant) impairment rating (IR) was 41% as certified by the Texas Workers' Compensation Commission (Commission)-selected designated doctor, whose report was "not contrary to the great weight of medical evidence."

The appellant (carrier) appealed, contending that the designated doctor relied on a report not in evidence and that the designated doctor's report does not comply with the Guides to the Evaluation of Permanent Impairment, third edition, second printing, dated February 1989, published by the American Medical Association (AMA Guides) and the Commission rules. The claimant responds, urging affirmance.

DECISION

Reversed and remanded.

The claimant was employed as the chief utility operator at a facility of a large petroleum company. It was undisputed that the claimant had been involved in two work-related explosions/fires prior to March 27, 2000. It is undisputed that the claimant sustained a compensable injury on March 27, 2000, in an explosion at the facility where he worked. It is also undisputed that the claimant's compensable injury includes a psychological component of post-traumatic stress disorder (PTSD). The parties stipulated that the claimant reached maximum medical improvement (MMI) on March 2, 2001.

The claimant was examined by Dr. J, a psychiatrist and carrier-required medical examination doctor on August 25, 2000. In a report dated September 25, 2000, the claimant was assessed as not being at MMI. That report indicated that Dr. F was the claimant's treating doctor and that Dr. F had referred the claimant to Dr. Co "for psychiatric care." Dr. J said the claimant should be reevaluated in 9 months. A report dated July 20, 2000, from Dr. Co to Dr. F confirmed he was treating the claimant and recommended an additional 180 days of treatment.

Dr. F, in a report dated March 2, 2001, certified the claimant at MMI and assessed a 37% IR. In that report, Dr. F stated that the claimant had been in treatment with Dr. Ca a psychiatrist. (Since there is no doctor involved in this case by the name of Dr. Ca the parties and the hearing officer assumed Dr. F was referring to Dr. Co.) How Dr. F arrived at the 37% IR is somewhat unclear other than Dr. F said he "would accept [Dr. Ca's] impairment of 34% for the psychiatric component" and an "additional 5% . . . for still unregained ranges of motion [ROM] of the neck and both shoulder areas" combined to equal the 37% IR. No report of Dr. Co or Dr. Ca assessing any kind of an

IR is in evidence. The carrier disputed the rating and Dr. Bu was appointed as the designated doctor.

Dr. Bu referred the claimant to Dr. Ba for a psychiatric assessment. Dr. Ba in a report dated May 31, 2001, notes, among other things, that he reviewed one page of Dr. Co's progress notes and a one-page letter from Dr. Co to Dr. F. Dr. Ba diagnosed PTSD and assessed an IR of "50-90 percent: Impairment of the whole person" for "moderate to severe emotional disturbance under ordinary to minimal stress." Dr. Ba does not reference any version of the AMA Guides. Dr. Bu, in a report dated June 21, 2001, certified MMI and assessed a 41% IR pursuant to the AMA Guides. The 41% IR was based on 4% impairment from Table 49, Section (II)(B) for the cervical spine, 3% impairment for cervical loss of ROM, 4% impairment for shoulder loss of ROM, and 34% for the psychiatric component. Dr. Bu commented that he "felt that [Dr. Ba's] [IR] was too high in light of the patients history and review of the available medical records. I concur with [Dr. Ca's] psychiatric component of 34%."

The Commission apparently requested clarification from the designated doctor and Dr. Bu responded by letter dated October 19, 2001. Regarding the psychiatric component Dr. Bu stated:

> Next, regarding the psychiatric impairment, [the claimant] was evaluated by [Dr. Co]. He determined that the psychiatric component was 34%. The patient was also evaluated by [Dr. Ba]. He stated that the psychiatric component was 75%. As stated in my report dated june 21, 2001, I felt that [Dr. Ba's] impairment was too high and thus concurred with [Dr. Co's] psychiatric component of 34%.

In the meantime Dr. J, in a Report of Medical Evaluation (TWCC-69) and narrative dated April 29, 2002, certified the claimant at MMI with a 0% IR finding no "permanent or lingering psychiatric impairment." Dr. J did not consider any orthopedic components. The Commission then sent the designated doctor Dr. J's report and asked for further clarification. Dr. Bu replied by letter dated July 1, 2002, noting that he had reviewed his reports, Dr. Co's, Dr. Ba's, as well as Dr. J's reports, and noted that three psychiatrists had evaluated the claimant, that Dr. Co had assessed a 34% rating, that Dr. Ba had assessed "a 75% impairment (the hearing officer found that Dr. Bu had "apparently interpreted [Dr. Ba's] findings to be a 75% [IR]") and Dr. J had assessed a 0% rating. Dr. Bu stood on his 41% IR.

Chapter 14 of the AMA Guides instructs how to rate mental and behavioral disorders and while Table 1 on page 233 allows considerable latitude in Classes 1 through 5 it does list four areas of functional limitation to be used in assessing impairment severity. (See Section 14.3 page 229.) None of the doctors reference how they arrived at their assessments and of course no report from Dr. Co addressing the 34% rating attributed to him is in evidence. Dr. J appears to say none apply because the claimant has a 0% IR.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.1(c)(3)(F) (Rule 130.1(c)(3)(F)), pertaining to the assignment of IRs, provides that the doctor assigning an IR "shall":

> (F) be responsible for referring the employee to another doctor or health care provider for testing, or evaluation, if additional medical information is required. The certifying doctor is responsible for incorporating all additional information obtained into the report required by this rule:
>
> (i) Additional information must be documented and incorporated into the impairment rating and acknowledged in the required report.
>
> (ii) If the additional information is not consistent with the clinical findings of the certifying doctor, then the documentation must clearly explain why the information is not being used as part of the impairment rating.

We note that Rule 130.1(c)(3)(F) uses the mandatory language of "shall" and "must." The hearing officer cites Rule 130.1(c)(3)(F), notes that it was the carrier's position that the rule was not followed, and nonetheless concludes that Dr. Bu "may not have followed the rules, but the evidence presented was insufficient to show that his findings were contrary to the great weight of the medical evidence or that his findings were invalid."

A designated doctor's opinion has presumptive weight (Section 408.125(e)) but the designated doctor must still adhere to the applicable AMA Guides and Commission rules. In this case Dr. Bu adopted a psychological rating without any reference to Chapter 14 of the AMA Guides and in violation of Rule 130.1(c)(3)(F). In such a case the designated doctor's report does not have presumptive weight.

We reverse the hearing officer's decision that the claimant has a 41% IR and remand the case back to the hearing officer. The hearing officer may go back to Dr. Bu instructing that any referral reports must be documented and incorporated into the IR and acknowledged in the required report (*see* Rule 130.1(c)(3)(A-F)) and that the psychiatric referral report is to comply with Chapter 14 of the AMA Guides. If the designated doctor is unable or unwilling to rate the claimant pursuant to the AMA Guides and Commission rules a second designated doctor may be appointed.

The hearing officer's decision that the claimant has a 41% IR is reversed and the case is remanded for action consistent with this decision.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Commission's Division of Hearings, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. *See* Texas Workers' Compensation Commission Appeal No. 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

ROBIN M. MOUNTAIN
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Thomas A. Knapp
Appeals Judge

CONCUR:

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Edward Vilano
Appeals Judge

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Roy L. Warren
Appeals Judge